

Message Text

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21

ACTION L-03

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SUBJECT: BRIBERY OF FOREIGN OFFICIALS BY U.S. FIRMS

REF: STATE 258169

1. IN RESPONSE TO QUESTION POSED IN PARA 6 OF REFTTEL, AS FAR AS EMBASSY CAN DETERMINE, THERE IS NO BOLIVIAN LAW, DECREE OR REGULATION WHICH DIFFERENTIATES BETWEEN SALES TO GOVERNMENT BY DOMESTIC FIRMS OR ENTITIES AND SALES BY AGENTS OR REPRESENTATIVES OF FOREIGN FIRMS. CHAPTER IV, ARTICLE 49 OF REGULATORY DECREE OF AUGUST 10, 1937, WHICH IMPLEMENTS LAW-DECREE OF APRIL 28, 1937, ESTABLISHING A NATIONAL COMMERCIAL REGISTER, PROHIBITS COMMERCIAL OPERATIONS WITH THE STATE OR ANY OF ITS DIVISIONS, OR WITH MUNICIPALITIES, BY LEGAL OR INDIVIDUAL PERSONS NOT, REPEAT NOT REGISTERED IN THE COMMERCIAL REGISTER OF THE CORRESPONDING JURISDICTION. ARTICLE 6 OF THE DECREE-LAW OF APRIL 28, 1937 STATES THAT INSCRIPTION IN THE REGISTRY IS OBLIGATORY FOR ALL BUSINESSMEN INVOLVED IN SALE OR PURCHASE OF MERCHANDISE OR VALUABLES, INCLUDING ON A REPRESENTATIONAL, COMMISSION, OR CONSIGNMENT BASIS.

2. BEHAVIOR AND ACTIVITY OF REGISTERED JURIDICAL OR
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INDIVIDUAL PERSONS IS REGULATED BY BOLIVIAN CIVIL AND PENAL

CODES, BUT AS FAR AS WE CAN DETERMINE, THERE ARE NO SPECIFIC PROVISIONS REGARDING AGENTS OR REPRESENTATIVES. IN FACT, THE TERM AGENT IS NOT CLEARLY DEFINED IN BOLIVIAN CIVIL CODE. LEGAL REPRESENTATION IS TERMED "PROCURACION," WHILE AGENCY ("MANDATO") IS MORE GENERAL AND INCLUDES GRANTING POWER OF ATTORNEY TO A PERSON, WHETHER OR NOT SAID PERSON IS A "PROCURADOR." PAGE 116 OF "A STATEMENT OF THE LAWS OF BOLIVIA IN MATTERS AFFECTING BUSINESS," AN OAS PUBLICATION OF 1974, DISCUSSES THE SUBJECT OF AGENCY, BUT DOES NOT CITE ANY SPECIFIC LAWS OR REGULATIONS.

3. BOLIVIAN LAW COVERING PAYMENT OF A BRIBE TO GOVERNMENT OFFICIALS IS ARTICLE 158 OF THE PENAL CODE OF MARCH 16, 1973, WHICH APPLIES TO BOTH THE ORIGINATOR OF A BRIBE AND ANY INTERMEDIARY. INFORMALLY TRANSLATED, THIS ARTICLE STATES: QUOTE HE WHO DIRECTLY OR THROUGH AN INTERMEDIARY PERSON GIVES OR PROMISES TO A PUBLIC OFFICIAL OR AUTHORITY A GIFT OR OTHER ADVANTAGE IN EXCHANGE FOR DOING OR NOT DOING ANYTHING RELATED TO HIS FUNCTION WILL BE SUBJECT TO SANCTION AS INDICATED IN ARTICLE 146, REDUCED BY ONE-THIRD UNQUOTE. ARTICLE 146 IMPOSES SANCTIONS OF FROM 2 TO 8 YEARS IMPRISONMENT AND FINE OF 100 TO 500 PESOS.

4. UNDER ABOVE PROVISION, INTENTION OF PARTIES AS TO WHETHER OR NOT THEY EXPECT AN UNFAIR ADVANTAGE APPEARS TO BE IMPORTANT FACTOR. THUS, A POLITICAL DONATION MAY BE GIVEN BY A FOREIGNER OR A BOLIVIAN IF AN ILLEGAL ADVANTAGE IS NOT EXPECTED OR OBTAINED AND IF IT IS GIVEN OPENLY. INTERPRETATION IS SOMEWHAT UNCLEAR SINCE LAW IS NEW AND LITTLE PRECEDENT EXISTS.

5. LA PAZ 3668 OF MAY 28, 1975 CONTAINS THE TEXTS OF LEGAL PROVISIONS CITED BY GOB IN ACTION AGAINST GULF OIL REPRESENTATIVE, AND LA PAZ 3686 OF MAY 28, 1975 CONTAINS AN EMBASSY COMMENT ON THE REGULARITY OF GOB LEGAL ACTIONS. THE TWO TELEGRAMS PORTRAY THE COMPLEXITY SURROUNDING THE LEGAL LIABILITY OF GULF OIL'S REPRESENTATIVE IN ALLEGED BRIBERY OF BOLIVIAN OFFICIALS.

6. LA PAZ 3668 CONTAINS SPANISH TEXT OF ARTICLE 158 CITED LIMITED OFFICIAL USE

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ABOVE AS WELL AS OTHER PROVISIONS CITED BY GOB IN GULF OIL CASE. IN PREPARING MATERIAL IN PARAGRAPHS 1 THROUGH 5, EMBASSY INFORMALLY CONSULTED SEVERAL KNOWLEDGEABLE BOLIVIAN LEGAL COUNSELS. IF DEPARTMENT DESIRES FURTHER TEXTUAL MATERIAL, PLEASE ADVISE.
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